

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>PAYSON COUNCIL FOR THE MUSICAL</b>	)	File No. EB-07-IH-5265
<b>ARTS, INC.</b>	)	NAL Account No. 201032080009
	)	Facility ID No. 134059
Licensee of Noncommercial Educational Station	)	FRN No. 0004296174
KRIM-LP, Payson, Arizona	)	
	)	
	)	
	)	

**CONSENT DECREE**

1. The Enforcement Bureau ("Bureau") and Payson Council for the Musical Arts, Inc. ("Licensee"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's above-referenced investigation into whether Licensee violated Section 399B of the Communications Act of 1934, as amended,<sup>1</sup> and Section 73.503(d) of the Commission's rules,<sup>2</sup> in connection with the broadcast by Licensee of underwriting acknowledgments over its noncommercial educational FM radio station, KRIM-LP, Payson, Arizona.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) "Adopting Order" means an Order by the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) "Complaints" mean the third-party complaints alleging violations of the Commission's Underwriting Laws, dated August 20, 2007 and December 5, 2007.
  - (f) "Compliance Plan" means the program described in this Consent Decree at paragraph 8.
  - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order.

<sup>1</sup> See 47 U.S.C. § 399b.

<sup>2</sup> See 47 C.F.R. § 73.503(d).

- (h) "Investigation" means the investigation concerning the Complaints commenced by the Bureau's August 20, 2007 and September 12, 2008 Letters of Inquiry<sup>3</sup> regarding whether Licensee violated the Commission's Underwriting Laws in connection with its operation of the Station on June 4, 2007 and October 23, 2007.
- (i) "Licensee" means the Payson Council for the Musical Arts, Inc. and its predecessors-in-interest and successors-in-interest as licensee of the Station.
- (j) "Parties" mean Licensee and the Bureau.
- (k) "Rules" mean the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (l) "Station" means low-power noncommercial educational FM radio station KRIM-LP, Payson, Arizona (Facility ID No. 134059).
- (m) "Underwriting Laws" mean Section 399B of the Communications Act of 1934, 47 U.S.C. § 399b, and Section 73.503(d) of the Commission's Rules, 47 C.F.R. § 73.503(d).

## II. BACKGROUND

3. Pursuant to Section 399B(a) of the Act and Section 73.503(d) of the Rules, advertisements are defined as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.<sup>4</sup> Section 399B(b)(2) specifically provides that noncommercial educational stations may not broadcast advertisements.<sup>5</sup> Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or businesses.<sup>6</sup> Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.<sup>7</sup> At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter and is consistent with the Commission's Rules and decisions establishing compliant underwriting announcements. Consequently, the Commission expects licensees to exercise reasonable, "good faith" judgment in this area, and affords some latitude to the judgments of licensees who do so.<sup>8</sup>

4. On August 20, 2007, the Bureau inquired about a complaint alleging that Licensee had aired advertisements in violation of the Underwriting Laws on June 4, 2007. Licensee responded on September 26, 2007, and provided applicable transcripts and recordings of the inquired-of material. On

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<sup>3</sup> See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Licensee, dated August 20, 2007 ("*August 20<sup>th</sup> LOF*"); Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Licensee, dated September 12, 2008 ("*September 12<sup>th</sup> LOF*").

<sup>4</sup> See 47 U.S.C. § 399b(a); 47 C.F.R. § 73.507(d).

<sup>5</sup> See 47 U.S.C. § 399b(b)(2).

<sup>6</sup> See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), republished, 7 FCC Rcd 827 (1992) ("*Public Notice*").

<sup>7</sup> See *id.*

<sup>8</sup> See *Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

September 12, 2008, the Bureau inquired about a complaint alleging that Licensee had aired additional advertisements in violation of the Underwriting Laws on October 23, 2007. Licensee responded on October 9, 2008, and provided additional transcripts and recordings of the announcements. The announcements may have violated the Underwriting Laws because they appear to exceed the bounds of what is permissible and within licensee's discretion under the Act and pertinent Commission precedent.<sup>9</sup> With respect to the issue of liability for any Commission rule violations that have occurred, Licensee also provided documentation, supported by affirmations, attempting to support its claim of financial hardship. The Bureau finds Licensee's financial showing credible in all respects. In arriving at the voluntary contribution amount, the Bureau, therefore, considers not only the nature of the misconduct in question, but also Licensee's limited ability to pay.

### III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order, or of the terms of this Consent Decree, shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree, and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation and dismiss the Complaints. In consideration for the termination of said Investigation and dismissal of the Complaints, Licensee agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Licensee concerning the matters that were the subject of the Investigation or the Complaints. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Licensee with respect to Licensee's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Licensee agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- a. Licensee will utilize a multi-level review procedure for underwriting content to be aired on the Station. All scripts of announcements will continue to be reviewed by Licensee's President, prior to broadcast, for compliance with the Underwriting Laws.

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<sup>9</sup> See *id.*

b. Licensee will train employees on acceptable underwriting content that complies with the Underwriting Laws. Within thirty days of being hired by Licensee, any new Station employee will be trained as to acceptable underwriting content that complies with the Underwriting Laws. In addition, Licensee Station employees will receive refresher training, on an annual basis, regarding existing guidelines and, where applicable, pertinent changes to the Underwriting Laws.

c. Licensee will also implement and maintain a plan to educate prospective underwriters about appropriate underwriting content and how Licensee incorporates such underwriting content in the messages that it prepares for underwriter approval and eventual broadcast. To that end, Licensee will summarize the Underwriting Laws for each client before it accepts any contract with the prospective underwriter to air underwriting messages over the Station and prepares the underwriting message for the underwriter's review. Licensee will not broadcast any announcement that does not comply with the Underwriting Laws.

d. Licensee will make good faith efforts, with respect to independently produced programming broadcast on the Station, to obtain from the distributors of such programming the copy for underwriting announcements contained in such programming in advance of such programming's broadcast, for the purposes of independently reviewing such copy for compliance with the Underwriting Laws.

10. **Compliance Reports.** Licensee will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, twenty-four months after the Effective Date, and upon expiration of this Consent Decree, three years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Licensee, stating that the officer has personal knowledge that Licensee has established and maintained on an ongoing basis operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. Each compliance report will describe any significant difficulties Licensee has encountered during the reporting period in ensuring compliance with the Underwriting Laws, what steps it has taken to resolve those difficulties, and the success of those steps in doing so. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554.

11. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire three (3) years after the Effective Date.

12. **Voluntary Contribution.** Licensee agrees that it will make a voluntary contribution to the United States Treasury in the amount of seven thousand dollars (\$7,000.00). Such contribution shall be made in ten (10) monthly payments of seven hundred dollars (\$700.00) each. The first payment is to be made within thirty (30) calendar days of the Effective Date, and the balance paid in subsequent consecutive monthly installments as set forth above. The payments must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payments must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payments by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payments by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Licensee

will also send electronic notification on the dates said payments are made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and to Jennifer.Lewis@fcc.gov.

13. **Waivers.** Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Licensee does not expressly consent) that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns.** Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Licensee does not admit or deny noncompliance, violation or liability for violating the Act, the Commission's Rules or Orders in connection with the matters that are the subject of this Consent Decree.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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P. Michele Ellison  
Acting Chief  
Enforcement Bureau

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Date

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Steve Bingham  
President  
Payson Council for the Musical Arts, Inc.

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Date